

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

Paul V. Morinville

Case Number : \_4:20cv980\_\_\_\_\_

**FILED**

VS.

APR 05 2021

Overwatch Digital Health, Inc. et al

Clerk, U.S. District Court  
Eastern District of Texas

**PLAINTIFF REPLY TO MOTION TO DISMISS**

Clive Barrett, Emmanuel Correia, and Rision Limited (collectively the “Defendants”) argument for dismissal turns primarily on two alleged facts: a) BioEye and Overwatch did not merge making the Overwatch/BioEye entity (Overwatch/BioEye) “fictional”; and b) that the Defendants are simply investors with no executive management control of BioEye, Overwatch or the allegedly “fictional” Overwatch/BioEye. For these reasons, the Defendants argue that no claim could be made under a), and even if it were possible to make a claim under a), that the Defendants are not a party to the suit under b).

However, these alleged facts as well as characterizations ascribed by the Defendants are misleading and untrue.

1. The Defendants claim through their response that the agreement is between me and Terry Fokas, and therefore between me and BioEye, or me and Overwatch. The Defendants argue that the Overwatch/BioEye entity never existed, categorizing it as “fictional”. As such, the Defendants claim that they are not parties to the lawsuit.

EXHIBIT A includes pages 1-3 of an investor presentation entitled “RISION, LTD - OVERWATCH/BIOEYE CORPORATE PRESENTATION” (Overwatch/BioEye Corporate Presentation) which was written by the Defendants and used to attract funding for

Overwatch/BioEye. EXHIBIT A shows that the merged Overwatch/BioEye entity was tangibly created because the Defendants sought investment in it.

The Defendants are listed in EXHIBIT B, page 24 of the same Overwatch/BioEye Corporate Presentation, as members of the Board of Directors of Overwatch/BioEye.

EXHIBIT C shows an organizational chart of Overwatch/BioEye in January 2020. This organizational chart determines the chain of command of Overwatch/BioEye and the matrixed relationships supporting the BioEye and Overwatch products and sales. Terry Fokas is the CEO of Overwatch/BioEye. Product development is split by function to support BioEye and Overwatch products as a single product development group, locating Engineering in the US, and Innovation and Research in Israel. For example, Dovi Yellen in Israel provided machine learning and artificial intelligence engineering for Overwatch seizure detection products throughout the later half of 2019 and the entirety of 2020 until September 2020. Marketing and Operations also support both BioEye and Overwatch. Chris Czura supported both BioEye and Overwatch in clinical trials. These reporting relationships are the foundation of how a company is organized and managed. Nothing in these relationships show any division of the BioEye and Overwatch entities. In fact, they show the opposite, that the BioEye and Overwatch entities were indeed merged into the Overwatch/BioEye entity for all practical purposes.

Exhibit B shows that the Defendants are Board Members of Overwatch/BioEye. Exhibit C shows that the organizational chart of a very real Overwatch/BioEye entity with its own consolidated chain of command. EXHIBIT A shows that the Defendants attempted to fund the merged entity. The Defendants claim that Overwatch/BioEye is “fictional” is not plausible. It is, indeed, false.

If the court determines that Overwatch/BioEye is a “fictional” entity, the Defendants must have been perpetrating a fraud by representing BioEye and Overwatch as a merged entity and listing themselves as Board Members to attract funding to the fictitious entity.

I was asked to approach investors who I knew, and with whom I have done business in the past, using the Overwatch/BioEye Corporate Presentation to pitch the Overwatch/BioEye entity to investors, which I did. This means that the Defendants duped me into unwittingly engaging in a fraud that the Defendants were perpetrating on unsuspecting investors, thus levying fatal damage to my reputation and career, and exposing me to criminal prosecution.

EXHIBITs A, B and C clearly show that Overwatch/BioEye is indeed a merged entity for all practical purposes and that the Defendant’s claim that Overwatch/BioEye is “fictional” is false. EXHIBIT C shows that Terry Fokas is the CEO of Overwatch/BioEye. Therefore, my agreement is between me and Overwatch/BioEye.

2. The Defendant’s claim that they were merely investors who were not part of, and did not participate in, the executive management of Overwatch/BioEye. EXHIBIT B, page 24 of the Overwatch/BioEye Corporate Presentation, directly contradicts that claim by showing that the Defendants were members of the Board of Directors of Overwatch/BioEye. Furthermore, the Defendants directed the day-to-day activities of Overwatch/BioEye at a micro level to include allocation of resources, contractor and vendor selection, employee hiring and termination, product development direction and design choices, marketing decisions, marketing vendor selection, financial and spending decisions, and much more.

I personally participated in multiple conference calls where defendant Clive Barrett made tactical management decisions related to product design, vendor selection, and more, including

actively leading these calls. These are acts performed by executive management within a company, not the acts of mere investors.

3. The Defendants claim that I accepted the risk that the RTO may fail, and if it did fail, I would not be paid. However, the Defendants omit critical facts of their role and actions in the failure of the RTO and their continuation of the RTO with the absconded BioEye entity.

The Overwatch/BioEye reverse takeover (RTO) with Rision was originally scheduled for April 2020. Due to the COVID-19 pandemic, the transaction was delayed until August 2020, which meant that Overwatch/BioEye required additional funding to continue operations until the RTO. Failure to secure that additional funding would cause Overwatch/BioEye to fail before the RTO could be executed under the new schedule.

I was asked to help identify and secure investors in Overwatch/BioEye using the Overwatch/BioEye Corporate Presentation. I approached several investors who I knew and whom I had done business with in the past and sent the Overwatch/BioEye Corporate Presentation to the investors to secure their investment. New investors were secured by Terry Fokas also using the Overwatch/BioEye Corporate Presentation.

But in July 2020, the Defendants unilaterally refused to accept any investment thus starving Overwatch/BioEye of funding and risking its failure. A short time later, in September 2020, the Defendants unilaterally cancelled the RTO and absconded with BioEye from the merged Overwatch/BioEye entity.

Said differently, the defendants refused to personally fund Overwatch/BioEye, refused to accept funding from other sources, canceled the RTO, and then simply walked away with BioEye from Overwatch/BioEye leaving me, the employees, contractors, vendors, and investors unpaid while the Defendants continued to market the products and intellectual property (that I

developed for Overwatch/BioEye) under BioEye alone to the Australian Football League and in clinical testing in a hospital in Italy. There is reason to believe, and it can be reasonably assumed, that the Defendants are continuing to execute the Rision RTO with the absconded BioEye assets.

4. The Defendants claim that they are not a party to the intellectual property dispute because the patents continue to be prosecuted by BioEye, and that they are simply investors in BioEye and therefore not part of the executive management of BioEye. As shown above and in EXHIBITs A, B, and C, the defendants were indeed performing executive management control over Overwatch/BioEye until September 2020 when they deliberately crashed the RTO and absconded with BioEye. There is reason to believe, and it can be reasonably assumed, that they have retained executive management control over BioEye. The Defendants are therefore a party to the intellectual property dispute.

The Defendants are legitimate parties in the suit and should not be dismissed from the suit.

30MAR2021 \_\_\_\_\_  
Date



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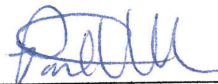
### CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2021, the forgoing document was served on the following parties by U.S.P.S. first class mail, postage prepaid and email on the following parties:

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